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BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C.

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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

To: The Commission

OPPOSITION OF AMERICAN MOBILE SATELLITE CORPORATION TO PETITION FOR RECONSIDERATION

American Mobile Satellite Corporation ("AMSC"), pursuant to Section 1.429 of the Commission Rules, hereby opposes the Petition for Reconsideration of the Commission's Memorandum Opinion and Order in the above-captioned proceeding,^{1/} filed jointly by the Public Safety Microwave Committee, the Association of Public-Safety Communications Officials-International, the County of Los Angeles, and the Forestry-Conservation Communications Association (collectively "Petitioners"). Contrary to Petitioners' claims, the record in this proceeding provides ample support for the Commission's decision to require public safety users to accept relocation from the 2 GHz band to equivalent facilities in other bands, at the expense of new Personal Communications Service ("PCS") licensees.

^{1/} FCC 94-60 (March 31, 1994), 59 Fed. Reg. 19642 (April 25, 1994).

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Background

A subsidiary of AMSC is licensed by the Commission to construct and operate the U.S. Mobile Satellite Service ("MSS") system in the 1544-1559/1645.5-1660.5 MHz bands. Construction of the system is well underway and operations of the system are expected to begin in 1995. At the same time, however, because of the shortage of available spectrum for MSS, AMSC also has been pursuing the allocation to MSS and the licensing of additional MSS systems in the 2 GHz band.^{2/}

This proceeding is part of an extensive effort to allocate and license additional spectrum for emerging technologies, including MSS and terrestrial-based PCS. In the First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992), the Commission exempted public-safety microwave users from mandatory relocation but encouraged their voluntary cooperation in relocating. Id. at 6891. In the Second Report and Order, 8 FCC Rcd 6495 (1993), the Commission reallocated five fixed microwave bands and adopted rules to accommodate existing 2 GHz fixed microwave users in cases where sharing would not be possible

^{2/} Petition for Rulemaking of Personal Communications Satellite Corporation for an Allocation of the 1970-1990 MHz (Earth-to-space) and 2160-2180 MHz (space-to-Earth) Bands to the Mobile Satellite Service (filed April 7, 1994); Application of Personal Communications Satellite Corporation for Authority to Construct a Domestic Communications Satellite System for the Provision of Mobile Satellite Service (filed April 7, 1994); See also Petition for Reconsideration of AMSC Subsidiary Corporation, ET Docket 92-9.

due to interference. In that Order, the Commission ensured that the fixed licensees could move successfully to the new bands at 3 GHz at no disadvantage. By its Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993), the Commission adopted provisions intended to provide reasonable access to the allocated spectrum to new services.

Throughout this proceeding, the Commission has been sensitive to the needs of public safety users of the allocated spectrum. Initially, the Commission was hopeful that the incumbent public safety users could share the spectrum with emerging technologies. First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd at 6891. As the arguments and evidence mounted, however, it became apparent that the widespread sharing that would be required to accommodate all public safety incumbents would effectively preclude any new uses of the spectrum. MO&O at para. 34. Accordingly, the Commission decided that public safety users would be subject to modified relocation standards by which the provider of the new technology must provide the incumbent user with comparable facilities within a reasonable time frame. MO&O at para. 35.

The relocation procedures ensure that the incumbents will experience no disadvantage by relocating. The costs will be paid entirely by the emerging technology licensee, the new facilities must be fully comparable or better than the facilities replaced, all activities necessary to operate

the new facilities will be complete prior to relocation, and the communication system must be fully built and tested before the relocation begins. Id. Should the new facilities not be fully comparable, within one year the public safety user may relocate back to its original facilities and stay there until equivalency is attained. Id.

Petitioners claim that the Commission's recent action was an abrupt reversal of Commission policy, without record support and arrived at without public notice, that will cause severe disruption to vital public safety services. As discussed below, none of these contentions are correct.

Discussion

Although Petitioners paint a picture of the Commission meeting in secret to purposefully undertake what petitioners describe as a "complete reversal of its prior position," the MO&O is a natural outgrowth of the record and policies under development throughout this proceeding. The Commission's stated purpose at each step of this proceeding has been to balance the benefits of providing additional spectrum for emerging technologies with the needs of incumbents, including particularly public safety agencies. See, e.g. First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886; Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589.

Increasing awareness of the difficulty of implementing a spectrum sharing plan was apparent at each stage of this proceeding. As the Commission indicated, commenters responding to the First Report and Order indicated that the use of unlicensed devices in the allocated band would be severely handicapped, if not prohibited, because of the public safety exemption.^{3/} In Petitions for Reconsideration of the Third Report and Order, others noted that the allocated frequency may prove inadequate for the introduction of PCS because of the public safety exemption^{4/} and the potential for excessive demands by incumbents.^{5/}

Petitioners find the Commission's action "sudden and mysterious" and therefore insist that the Commission "supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored...." Petition for Reconsideration at p.12. The Commission has already met the burden described by the Petitioners. It specifically indicated that it had previously "underestimated the difficulty that PCS will have in sharing spectrum" and that allowing public safety users to remain in the band "would defeat our primary goal in this

^{3/} Apple Computer, Comments to the Third Notice of Proposed Rulemaking at 5-7; Rolm, Comments to the Third Notice of Proposed Rulemaking at 2-3.

^{4/} American Personal Communications, Petition for Reconsideration of Third R&O at 12-13; Cox at 6-9.

^{5/} UTAM Comments to the Third Notice of Proposed Rulemaking at 11-12.

proceeding of providing usable spectrum for the implementation of emerging technologies." MO&O at para. 34. This paragraph establishes that the Commission, after reasoned analyses, is deliberately changing its prior policy. Such changes are permissible. "An agency must be given flexibility to reexamine and reinterpret its previous holdings," as long as it does so thoroughly enough to enable judicial review. Office of Communications of the United Church of Christ v. FCC, 560 F.2d 529, 532 (2nd Cir. 1977).

Petitioners completely fail to demonstrate that the required relocation will be harmful to life, property, or public safety licensees. To the contrary, the Commission's new requirements guarantee public safety microwave users that any facilities they must abandon will be replaced by facilities that are at least as useful to them. Thus, public safety will not be harmed.

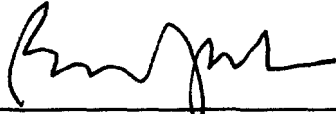
Conclusion

The modified relocation plan for public safety users is the only way to ensure nationwide availability of the allocated spectrum for new and emerging technology and does not disadvantage any public safety users. The Commission's decision to adopt this plan was based on an ample record in an ongoing proceeding in which the relocation of public

safety microwave users was clearly at issue. Accordingly,
the Petition for Reconsideration should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cindi L. Smith, a secretary in the law firm of Fisher Wayland Cooper Leader and Zaragoza L.L.P., do hereby certify that I have, this 29th day of June, 1994, mailed copies of the foregoing "**OPPOSITION OF AMERICAN MOBILE SATELLITE CORPORATION TO PETITION FOR RECONSIDERATION**" by first class mail, postage prepaid, to the following:

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